

REMARKS

Claims 1-8, 10-13, and 15-18 have been rejected for being anticipated by U.S. Patent No. 5,937,387 to Summerell. Also, claims 9, 14 and 19 have been rejected for being unpatentable over Summerell.

In response to the Office Action, independent claims 1, 10 and 15 have been amended. Specifically, claim 1 has been amended to require that personal data be provided to a website by a plurality of end users from a plurality of worksites and that the personal data be analyzed at the website to allow treatment exercises to be prescribed. Similarly, claim 10 has been amended to require a means for presenting information modules to a plurality of end users at a plurality of worksites and a medical source for evaluating the personal data via an internet connection to selectively tailor a personal occupational program. Further, claim 15 has been amended to require that personal data be inputted by a plurality of end users at a plurality of worksites, that the personal data be retrieved by the provider, that the personal data be reviewed by a medical expert through the provider to prescribe treatment exercises in an occupational program, and that the end user and medical expert selectively modify the occupational program. Due to the amendments to the independent claims, dependent claims 2, 4, 8 and 13 have been amended to correct antecedent bases.

Support for these amendments is found in the specification in Figs. 1 and 2, and in passages on page 3 at lines 17 through 19, on page 4 at lines 14 through 18, on page 5 at lines 1 through 6, on page 5 at lines 21 through 30, on page 6 at lines 8

through 15, on page 7 at lines 5 through 8, and on page 8 at line 21 through page 9 at line 11.

The amended claims have been presented herein to improve the readability of the claims and to more specifically point out the features that distinguish the present invention over the cited art. Further, the amended claims have been made to more clearly define the method and system for the present invention. Claims 1-19 remain pending.

Rejections Under 35 U.S.C. § 102

Claims 1-8, 10-13, and 15-18 have been rejected for being anticipated by Summerell. Unlike the system disclosed in Summerell, amended independent claim 1 requires that personal data be provided to a website by a plurality of end users from a plurality of worksites and that the personal data be analyzed at the website to allow treatment exercises to be prescribed. Furthermore, amended independent claim 10 requires a means for presenting information modules to a plurality of end users at a plurality of worksites and a medical source for evaluating the personal data via an internet connection to selectively tailor a personal occupational program. In addition, amended independent claim 15 requires that personal data be inputted by a plurality of end users at a plurality of worksites, that the personal data be retrieved by the provider, that the personal data be reviewed by a medical expert through the provider to prescribe treatment exercises in an occupational program, and that the end user and

medical expert selectively modify the occupational program.

In contrast with the original claims for the present invention, Summerell neither teaches nor suggests the use of a website, website provider or internet connection to collect and review personal data for medical purposes. In fact, Summerell's only reference to the internet states that its "additional embodiments can be accessed through an internet or intranet format..." Further, Summerell provides no enabling disclosure regarding any internet-based wellness plan, nor any motivation to use one.

Nevertheless, the Applicants have amended the independent claims to more specifically claim their invention. Unlike the cited reference, the claims now require the use of the system by a plurality of end users at a plurality of worksites. Further, the amended claims require that the personal data inputted by the end users be retrieved by the internet provider and analyzed at the website by a medical expert. This requirement is not disclosed by Summerell, which uses an automated physiological age planner in its software to convert the patient data to a physiological age and to suggest treatments. In addition, Summerell fails to disclose that a medical expert can modify the wellness plan based on worksite or occupational changes.

For the reasons set forth above, Attorney for Applicants contends that amended independent claims 1, 10, and 15 are patentably distinguishable from the system disclosed in Summerell. Further, because claims 2-9, 11-14, and 16-19 directly or indirectly depend on claims 1, 10 or 15, they are likewise patentably distinguishable over the cited reference. In light of the above amendments and arguments, Attorney for

Applicants believe the basis for rejecting claims for anticipation by Summerell is overcome and the rejections should be withdrawn.

Rejections Under 35 U.S.C. § 103

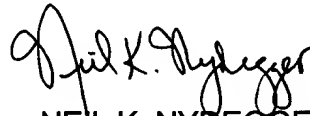
Claims 9, 14 and 19 have been rejected for being unpatentable over Summerell. The Examiner asserts: "it would have been obvious to one of ordinary skill in the art at the time of the invention to include deliverables such as a CD or videotape because the advantage of using a CD or videotape allows one to save the information in a more secure way." No reference supporting this assertion is cited. Further, no motivation for using a deliverable is found in Summerell. In fact, based on Summerell's use of a software-based system that houses the personal data onsite, no additional storage means is needed. Therefore, Summerell teaches away from using a deliverable as asserted by the Examiner.

In light of the arguments presented above for distinguishing the claimed present invention from Summerell, Attorney for Applicants respectfully submits that Summerell and the Examiner's assertion are improperly combined based on hindsight. Consequently, Applicants contend that claims 9, 14 and 19 are nonobvious with respect to Summerell and the Examiner's assertion. Furthermore, claims 9, 14 and 19 are patentable due to their dependence on patentable independent claims.

In conclusion, Applicants respectfully assert that claims 1-19 are patentable for the reasons set forth above, and that the application is now in a condition for allowance. Accordingly, an early notice of allowance is respectfully requested. The Examiner is requested to call the undersigned at 619-688-1300 for any reason that would advance the instant application to issue.

Dated this 13th day of April, 2005.

Respectfully submitted,



NEIL K. NYDEGGER
Attorney for Applicant
Registration No. 30,202

NYDEGGER & ASSOCIATES
348 Olive Street
San Diego, California 92103
Telephone: (619) 688-1300

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | | |
|-----------------------|--------------------------------------|---|----------|
| In re application of: | Gary Leeds et al. |) | |
| | |) | |
| Serial No: | 09/808,742 |) | Art Unit |
| | |) | 3623 |
| Filed: | March 14, 2001 |) | |
| | |) | |
| For: | METHOD FOR PREVENTION/REHABILITATION |) | |
| | CUSTOMIZATION |) | |
| | |) | |
| Examiner: | Johnna Stimpak |) | |
| | |) | |
| Customer No: | 23862 |) | |
| | |) | |
| Attorney Docket: | 11273.12.1 |) | |

CERTIFICATE OF MAILING UNDER 37 CFR § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 13th day of April, 2005.



DEBRA D. BURNS
Legal Document Assistant

Transmitted: Response to the Office Action dated December 13, 2004.

Respoadtd12-13-04:ddb